

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.

ORDER

Narayan Lal.

Versus

State of Rajasthan
& Anr.

S.B. Criminal Misc. Petition No. 1161/2005
against the order dated 9-8-2005 passed
by the Judicial Magistrate, Sumerpr, district
Pali in FR No. 59/2003.

...

Date of Order:

September 08, 2006

PRESENT

HON'BLE MR. JUSTICE H.R. PANWAR

Mr. A.K. Acharya, for the petitioner.
Mr. Ashok Upadhyaya, Public Prosecutor for the State.
Mr. Sunil Joshi, for the non-petitioner No.2.

BY THE COURT:

By this criminal miscellaneous petition under Section 482 of the Code of Criminal Procedure, 1973 (for short, "the Code" hereinafter) the petitioner has challenged the order dated 9-8-2005 passed by the Judicial Magistrate, Sumerpur, district Pali (for short, "the trial Court" hereinafter), whereby the trial Court dismissed the protest petition filed by the petitioner and accepted the negative Final Report filed by the police.

I have heard learned counsel for the parties.
Carefully gone through the order impugned.

It is contended by the learned counsel for the

petitioner that a blank cheque, though signed by the petitioner, while the petitioner was carrying it to the bank, was lost on the way. The loss of cheque was promptly reported to the police and the bank and, therefore, the bank recorded "stop payment" on receiving the intimation of loss of cheque. However, the police did not investigate the matter and submitted the negative final report. On a notice to the petitioner, he filed the protest petition and made his statement under Section 200 of the Code and produced witness CW 2 Sanwala Ram, whose statement was recorded under Section 202 of the Code.

The trial Court dismissed the protest petition and accepted the negative final report only on the ground that in some proceedings under Sections 107/116 of the Code, CW 2 Sanwala Ram filed an affidavit stating therein that the petitioner-complainant and the accused named in the FIR had some business dealings. According to the learned counsel, the protest petition has been dismissed by the trial Court on consideration of the materials which were not on the record of the instant case.

It is settled law that only the evidence produced in a particular case has to be read in that case and not any material which does not form part of the case. On careful perusal of the order of the trial Court, it appears that there are consistent statements of the petitioner and his witness CW 2 Sanwala Ram that the petitioner, while carrying the cheque on the way, lost it

and the matter was reported to the police and the bank and the bank recorded "stop payment." On careful perusal of the order impugned, it nowhere appears that the statements of the witnesses produced by the complainant-petitioner have been properly appreciated; on the contrary, it appears that much weight was attached by the trial Court in dismissing the protest petition on the affidavit of CW 2 Sanwala Ram which was filed in other proceedings under Section 116 (3) of the Code. Any evidence or affidavit produced in other proceedings cannot be formed as a part of the instant case. It is only at appropriate stage if the party in that case is examined and confronted with the document then only that document can be used and till then such document cannot be used. Even the affidavit has not been put to its deponent whether such affidavit was made by him. In the circumstances, therefore, the order impugned of the trial Court cannot be sustained and is liable to be set aside and the matter deserves to be remanded to the trial Court to pass a fresh order confining its consideration to the material available on record, including the statement of the complainant-petitioner recorded under Section 200 of the Code and the witnesses produced by him under Section 202 of the Code.

In the result, the criminal miscellaneous petition is allowed. The order impugned dated 9-8-2005 passed by the Judicial Magistrate, Sumerpur, district Pali, is set aside and the

matter is remanded to the trial Court to pass a fresh order in accordance with law.

(H.R. PANWAR), J.

mcs